

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
 )  
Interconnection and Resale Obligations )  
Pertaining to Commercial Mobile )  
Radio Services )

CC Docket No. 94-54

Federal Communications Commission  
Office of Secretary

OCT - 4 1996<sup>1</sup>

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COMMENTS OF GTE MOBILNET

GTE Mobilnet ("GTE") hereby submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Third Notice of Proposed Rulemaking* ("*Third NPRM*") in the above-captioned proceeding.<sup>1</sup> In the *Third NPRM*, the Commission seeks comment on whether the roaming obligation applicable to commercial mobile radio service ("CMRS") providers should be defined to include providing "automatic" roaming service to other carriers.<sup>2</sup>

GTE opposes the imposition of an automatic roaming requirement on CMRS providers. GTE believes that the marketplace rather than FCC regulation should guide the development and deployment of wireless services.

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<sup>1</sup> Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, *Second Report and Order and Third Notice of Proposed Rulemaking*, CC Docket No. 94-54, FCC 96-284 (released August 15, 1996).

<sup>2</sup> The term "automatic roaming" refers to the ability to place or receive a call on a host system (a CMRS system other than the one to which the person subscribes) without having to take action other than turning on the mobile phone. Automatic roaming requires technical compatibility between the phone and the host system, and a contractual arrangement between the home and host systems.

## I. DISCUSSION

The Commission issued the *Third Notice* in order to update its record on the issue of automatic roaming. The Commission notes that since the last round of comments were submitted in this docket, a number of broadband PCS providers have become operational. Also, the Commission states that technical standards necessary to render cellular and certain PCS networks interoperable for automatic roaming purposes appear to have been developed, and that carriers have begun negotiating roaming agreements in some markets. In light of these developments, the Commission seeks comment on whether to adopt an automatic roaming requirement. The Commission is concerned that absent such requirement during the broadband PCS build-out period, market conditions may create economic incentives for certain CMRS providers to discriminate unreasonably in the provision of roaming.<sup>3</sup>

Through its subsidiaries, GTE holds both cellular and broadband PCS licenses. GTE's interest in both incumbent and start-up CMRS providers gives it a unique perspective on issues like roaming. GTE believes that there is no valid reason to adopt an automatic roaming requirement at this time. First, adopting new regulation without clear evidence that such regulation is necessary to protect the public interest runs counter to Congress' mandate in recent telecommunications legislation. Second, absent evidence that the marketplace will fail to protect consumers' interest with regards to automatic roaming, market forces rather than regulation should govern CMRS provider deployment and operations. Third, even if a CMRS provider attempted

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<sup>3</sup> *Third NPRM* at 11-12.

to discriminate against another carrier in providing roaming services, such conduct would be prohibited under the Communications Act.

In the last three years, Congress has twice adopted major telecommunications legislation aimed at opening up markets to competition and replacing regulation with competition.<sup>4</sup> In general, these Acts are founded in the notion that regulation should only be adopted and enforced when market forces fail to protect the public interest. In particular, the 1996 Act requires the Commission to forbear from enforcing statutory provisions that are not necessary to prevent unreasonably discriminatory rates or practices or to protect consumers.<sup>5</sup> Similarly, the OBRA authorizes the Commission to forbear from enforcing certain statutory sections where such enforcement is not necessary.<sup>6</sup>

In response to this legislation, the Commission has adopted a "goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees who are classified as CMRS providers."<sup>7</sup> Indeed, in this proceeding, the Commission recognized that Congress has charged the FCC with a duty to promote competition and

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<sup>4</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993) (hereinafter "OBRA"); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (hereinafter "1996 Act").

<sup>5</sup> 47 U.S.C. § 160(a)(2).

<sup>6</sup> 47 U.S.C. § 332(c)(1)(A).

<sup>7</sup> Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1418 (1994).

reduce regulation in order to secure lower prices and higher quality services for consumers and encourage the rapid deployment of new technologies.<sup>8</sup>

The OBRA and the 1996 Act together establish a policy that existing regulations that are no longer necessary must be removed.<sup>9</sup> It stands to reason, then, that prior to adopting any new regulation, the Commission must find that the rule is needed to prevent unreasonably discriminatory rates or practices or to protect consumers. GTE submits that there is no evidence at this time to support a finding that market forces will fail to ensure that automatic roaming agreements will be entered into by CMRS providers when such agreements are technically and economically feasible.

In the *Third Notice*, the Commission justifies the potential need for an automatic roaming requirement on statements by broadband PCS providers that cellular and other CMRS providers should negotiate in good faith with, and refrain from discriminating against PCS providers in order to facilitate automatic roaming agreements.<sup>10</sup> In addition, the Commission cites to arguments from some commenters that a proactive FCC position on roaming, rather than after-the-fact adjudication through the complaint process, is necessary to jump-start competition.<sup>11</sup> Nowhere does the Commission allege that CMRS providers are actually failing to negotiate in good faith or

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<sup>8</sup> *Third Notice* at 2.

<sup>9</sup> Indeed, recently a federal appeals court found arbitrary and capricious an FCC decision not to eliminate a regulation no longer needed due to competition. *Cincinnati Bell v. FCC*, 69 F.3d 752 (6<sup>th</sup> Cir. 1995).

<sup>10</sup> *Id.* at 11, n.43.

<sup>11</sup> *Id.* at 12.

discriminating against PCS providers in negotiating roaming agreements. As noted above, regulating based on predictive assumptions about the behavior of market participants is contrary to both the mandate of the new legislation and past statements by the Commission. No automatic roaming requirement should be adopted unless evidence exists that such regulation is necessary.

GTE has always negotiated and will continue to negotiate in good faith with other CMRS providers, including PCS carriers, to establish automatic roaming agreements. GTE believes that all CMRS carriers have an incentive to enter into roaming agreements where technically and economically feasible in order to provide the maximum coverage area for subscribers. GTE is not aware of any evidence that market incentives have failed to ensure that roaming agreements are formulated.

GTE notes, however, that should the market fail, the Commission already has all the tools it needs to take action against carriers that discriminate against competitors in negotiating automatic roaming agreements. In particular, the Commission found in the *Second Report and Order* in this docket that roaming is a common carrier service subject to Title II of the Communications Act.<sup>12</sup> As such, carriers are already prohibited from unreasonably discriminating and from engaging in any unreasonable acts and practices with respect to roaming.<sup>13</sup> The Commission can enforce the requirements of these sections through the complaint process. Although some commenters have alleged that proactive requirements rather than reactive adjudication by complaint is

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<sup>12</sup> *Second Report and Order* at 7-8.

<sup>13</sup> 47 C.F.R. §§ 201, 202.

necessary to ensure that automatic roaming agreements are formed, these claims are unfounded. The requirements of the Communications Act together with the threat of FCC enforcement are more than adequate to ensure that automatic roaming agreements are negotiated in a reasonable and nondiscriminatory manner.

## II. CONCLUSION

GTE believes that there is no valid reason to adopt an automatic roaming requirement at this time. First, adopting new regulation without clear evidence that such regulation is necessary to protect the public interest runs counter to Congress' mandate in recent telecommunications legislation. Second, absent evidence that the marketplace will fail to protect consumers' interest with regards to automatic roaming, market forces rather than regulation should govern CMRS provider conduct. Third, even if a CMRS provider attempted to discriminate against another carrier in providing roaming services, such conduct would be prohibited under the Communications Act.

Respectfully submitted,

GTE Service Corporation and its telephone  
and wireless companies

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October 4, 1996

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### **Certificate of Service**

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments of GTE Mobilnet" have been mailed by first class United States mail, postage prepaid, on October 4, 1996 to all parties of record.



Ann D. Berkowitz